Common Law Reasoning and Institutions

Tuesday 18 May 2010: 10.00 – 1.15 pm

Candidates will have fifteen minutes during which they may read the paper and make rough notes ONLY in their answer books. They then have the remaining THREE HOURS in which to answer the questions.

Candidates must answer the COMPULSORY question in Part A and THREE from the SEVEN questions in Part B.

Candidates should answer all parts of a question unless otherwise stated.

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PART A

1. (a) (i) Explain the process involved in finding the following case report using on the online library


(ii) What is a neutral citation?

(iii) What do the following abbreviations stand for?

LLB and MLR.

(iv) On which freely available website do you find British and Irish case law & legislation, European Union case law, Law Commission reports, and other law-related British and Irish material?

(Answer all questions – total five marks)

(b) Answer all the following questions.

(i) On which of the six topics was the essay which you submitted via the VLE? How did you first approach the topic and to what extent did your understanding of the question changed as you read material?

(ii) What sources were of most value to you? How did you find these? Rank them in terms of their authority and ease of understanding.

(iii) Outline the conclusions in your essay and justify them in terms of the sources you have identified.

(iv) If you were to undertake the same research exercise tomorrow what, if anything, would you do differently?

(Answer all sections – total 20 marks)
2. 'Lord Woolf sought to downplay the role of courts and increase alternative dispute resolution. But civil justice will always require that many disputes must be resolved by a court.'

Discuss.

3. 'The common law always contained due process principles. Article 6 ECHR merely provides a new way of thinking about them as human rights.'

Discuss.

4. 'The days of publicly funded legal aid are over. Reforms are entirely driven by the argument that the only way of delivering an efficient service is to open legal aid providers to the "discipline of the market". This will mean the withdrawal of the Government as a provider of funds.'

Discuss.

5. EITHER

(a) 'The role and functions of a court of appeal and a supreme court are different. The United Kingdom has created a Supreme Court in name but not in function; it would be better if no change had been made.'

Discuss.

OR

(b) 'The judiciary is a core institution in a liberal democracy governed by the rule of law. A representative judiciary reflects the idea that all should be able to participate in the small and large decisions that shape the society in which we live. It can not be acceptable to exclude, or appear to exclude, well qualified candidates.'

Discuss, and assess the extent to which the current selection process in England and Wales achieves a representative judiciary.
6. ‘Miscarriages of justice are usually due to errors or abuse of process by the police at the investigation stage. Thus real criminal justice reform should focus on policing and the investigation of crime.’

Discuss.

7. ‘The predominant value of the doctrine of precedent remains the maintenance of judicial authority, rather than that of responding to the needs of justice in individual cases.’

Discuss.

8. Read the following material concerning the (fictitious) Endangered Species Act 2007 (ESA 2007) and then advise the parties as asked in situations (a) – (d).

When the Minister for Overseas Aid introduced the ES Bill into Parliament he stated, ‘This legislation will help protect many of the world’s native species facing possible extinction in their natural habitat by controlling the importation of wildlife and wildlife products into the United Kingdom and by imposing harsh penalties on those who seek to make a profit from trade in endangered species.’ When asked if the legislation would cover the importation of rare breeding fish from a specialised Japanese farm to a carp breeding farm in Scotland, the Minister replied, ‘The legislation will not cover importation from a specialised breeding farm to another; it is wildlife in its natural state that we are protecting.’

Section 1 of the Act specifies that HM Revenue and Customs (HMRC) may issue a licence for (a) the importation of or (b) the possession of any wildlife or wildlife product but that ‘any licence obtained by a false or misleading statement shall be void’. Section 2 makes it an offence for ‘any person’ to ‘import or seek to import into the United Kingdom any wildlife or wildlife product unless he has an import licence’. Section 3 makes it an offence for ‘any person to knowingly be in possession in the United Kingdom of any wildlife or wildlife product that has been imported into the United Kingdom unless he has a possession licence’.

The interpretation clause specifies that for the purposes of the Act

“import” means to bring into or cause to be brought into the United Kingdom from another state;

“import licence” and “possession licence” mean licences issued pursuant to section 1 of this Act;

(question continues on the next page)
“wildlife” means any animal, bird or fish living in its natural habitat;

“wildlife product” means any body part or any skin, fur, hair or other body covering of any wildlife.

(a) Tony purchases a belt made from the skin of a very rare snake for his own use by mail order from Taiwan. The seller in Taiwan farms snakes specifically for the purpose of using their skins in the manufacture of clothing accessories that are sold to the general public. The breeding programme at the farm has been so successful that the number of snakes has increased dramatically and the farm now exports live snakes – including the type that the belt is made from – to zoos and conservation schemes in ten countries. Customs intercept the delivery and Tony is charged under s.2. Tony has no licence.

Advise Tony.

(b) Tundi, a renowned figure in Uganda for her work in promoting the cause of protecting endangered species, arranges to make a tour of England to rally support for her campaign. The symbol of her campaign is an elephant’s tusk that was carved over 200 years ago. Tundi arrives in England with the tusk and leaves it in storage at London airport. When she returns to pick it up, she is arrested and charged under s.2. Tundi has no licence.

Advise Tundi.

(c) Stephanie owns a shop in which she sells natural medicines. Her premises are raided by Customs officials and a quantity of traditional Chinese remedies are seized that are shown on analysis to contain small amounts of powders made from dried tiger penis and elephant tusks. Stephanie is charged under s.3. Stephanie has no licence. Stephanie claims she does not know that the products contained these powders, but the Customs officials note that accompanying papers written only in Chinese refer to the ingredients. Stephanie does not read or speak Chinese.

Advise Stephanie.

END OF PAPER